

REPORT

Of the Committee of Claims, in the case of Garrett Fountain.

DECEMBER 15, 1823.

Read, and ordered to lie on the table.

The Committee of Claims, to whom was referred the petition of Garrett Fountain, of New York,

REPORT:

The petition states, that, in the year 1813, he did, by permission, erect a provision store house on the public ground at New Utrecht, Long Island, New York, near to Fort Lewis, at his own expense, exceeding \$1,000; that, by an order of General Dearborn, he hired the house, in 1814, to Benjamin Romaine, agent of the United States, for \$100 per annum; that it was used as a place of deposite for provisions, and an issuing store, from the 1st of June, 1814, to the 30th of November, 1817, for which he claims the sum of of 350 dollars.

The petitioner further states, that he has been denied the payment of this sum, on the plea that the house was on public ground, and at a place where the United States were not bound to furnish store houses for the deposite of provisions. He, therefore, seeks redress through the interposition of Congress.

The question in this case, seems to be, whether the place was a *stationary post*, at which the United States were bound to furnish a store house. One stipulation between the United States and the contractor, is in these words, "that, at all stationary posts, proper store houses shall be provided for the reception and safe keeping of the provisions *deposited* from time to time at such posts, respectively, and the contractors shall suffer no loss for want of such stores."

The accounting officers of Government contend, that this was not a stationary post. In aid of this belief, the Committee would remark, that the circumstance of the petitioner having applied for permission to erect a house on public ground, at his own expense, goes far to prove that he intended by it his own accommodation only. It would be unusual for private individuals to erect houses on public

ground, with a view thereafter to rent those houses to the public. In such cases, it is believed, the United States choose to build houses for themselves, rather than to rent them.

Another circumstance, tending to confirm the opinion of the accounting officers, is, that the petitioner was the contractor's agent, and if, as was before stated, the erection of the house was for his own accommodation, the Committee think he was sufficiently paid, in having the use of it during the existence of his contract. The fact of his having rented it to Benjamin Romaine, agent of the United States, would not vary this principle, because the agent could not have been invested with the requisite authority to enter into any stipulations of the kind. The Committee, therefore, recommend, that the prayer of the petitioner ought not to be granted.

TREASURY DEPARTMENT,

Third Auditor's Office, Dec. 13th, 1823.

SIR: I have the honor to acknowledge the receipt of your letter of the 10th instant, enclosing the petition and documents of Garrett Fountain; and, in reply to your inquiries, to state, that the former contracts for supplying the army with provisions, contained an article as follows, viz: "That, at all stationary posts, proper store-houses shall be provided for the reception and safe keeping of the provisions *deposited*, from time to time, at such posts, respectively; and the contractor shall suffer no loss for want of such stores." By a previous article, the contractors are bound to *deposit*, at the fortified places and military posts, provisions, on proper requisitions, for the space of three months, and, in some cases, six and nine months in advance. The store-houses contemplated by the other article, are taken to mean such as may be necessary to contain deposits thus ordered; consequently, unless the place for which storage is claimed come within this meaning, no allowance is deemed to be authorized.

In the present case, the place at which the store-house was erected, was not one of the description contemplated in the contract. The Government was not bound to supply a store-house at the place, for the use of the contractor, either to issue his provisions from, or to store them; and the claim was, accordingly, refused allowance.

With great respect,

Your most obedient servant,

PETER HAGNER, *Auditor.*

The Hon. LEWIS WILLIAMS.